

MONTANA SUPREME COURT PUBLIC MEETING

FILED

Tuesday, March 20, 2007, 1:30 p.m.

APR 17 2007

Attorney's Lounge, 4th floor

Justice Building, 215 North Sanders, Helena

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Chief Justice Karla Gray called the meeting to order at 1:30 p.m. All Justices were present.

The agenda items included consideration of (1) Meeting Minutes; (2) Revisions to Rules of Lawyer Disciplinary Enforcement; (3) Water Court Lawyers/Non-lawyer Proposals; (4) Revisions to the Montana Rules of Evidence; and (5) Appointing New Members to Advisory Commission on Rules of Civil and Appellate Procedure.

AGENDA ITEM 1: MINUTES

Chief Justice Gray moved to approve the minutes from February 27, 2007.

AGENDA ITEM 2: REVISIONS TO RULES OF LAWYER DISCIPLINARY ENFORCEMENT

Chief Justice Gray circulated an order revising the Rules of Lawyer Disciplinary Enforcement, Rule 16. All Justices signed.

AGENDA ITEM 3: WATER COURT LAWYERS/NON-LAWYER PROPOSALS

Justice Morris discussed his recommendations for adoption of the Water Court's Petition to Adopt Rules Regarding Non-Lawyer Appearances in the Water Court and Pre and Post Decree Conferences with DNRC Claim Examination Staff (Petition). Barry Rice asked for clarification of the requirements for lawyer appearances. Lezlie Kinne expressed concern that rules restricting non-lawyer appearances would slow down the certification process involved with water rights. Chief Water Judge C. Bruce Loble of the Montana Water Court answered questions from the Justices. Bob Lane, Department of Fish Wildlife and Parks, spoke in support of Justice Morris' Memorandum. Tim Hall, Department of Natural Resources, also agreed with Justice Morris' Memorandum. Candace West, Department of Justice/Attorney General's Office, approved of the distinction between claim filing as judicial and claim examination process as administrative. The distinct administrative process appears to allow corporate ownership structures to address administrative issues. Ms. West suggested that non-lawyers must end involvement when motioning for determination by the Water Court. Steve Brown agreed with Justice Morris' Memorandum. Mr. Brown stated that enforcement of a preliminary decree was a legal issue. John Connor, Chair of the Commission on the Unauthorized Practice of Law, spoke in support of Justice Morris. Mr. Connor stated that any rule change should focus on protecting the public from unlicensed offenders. Justice Morris proposed noticing another public meeting. Chief Justice Gray seconded and proposed that public comment could provide more input. Justice Morris agreed. Chief Justice Gray requested that addresses of those present be included in the meeting minutes.

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Tim Hall, Montana Department of Natural Resources	tel: (406) 444-6699
Bob Lane, Montana Department of Fish Wildlife and Parks	tel: (406) 444-4045
Steve Brown, Montana Board of Natural Resources	tel: (406) 442-8711
Chris Manos, State Bar of Montana	tel: (406) 447-2203
John Connor, Commission on the Unauthorized Practice of Law	tel: (406) 444-5791
Candace West, Dept. of Justice / Attorney General	tel: (406) 444-5886

The next public meeting will be noticed for a Wednesday morning to provide more time for the submission of public comments and discussion.

AGENDA ITEM 4: REVISIONS TO RULES OF EVIDENCE

Justices Cotter and Nelson delivered their recommendation to the Court on the petition of the Commission on Rules of Evidence. The Commission on Rules of Evidence proposed to amend the Montana Rules of Evidence, Rules 407, 803(8), and 806. Justices Nelson and Cotter did not recommend amending 804(b)(6). Chad Wright, representing the Montana Association of Criminal Defense Lawyers, stated his organization opposed the adoption of the Rule 804(b)(6) amendment. The Justices voted 7-0 to adopt the amendments to Rules 407, 803(8), and 806. Justice Cotter proposed writing an order adopting amendments to Rules 407, 803(8), and 806. The proposed order will also discuss the Supreme Court's decision to vote down the proposed amendment to 804(b)(6). Chief Justice Gray seconded, stating that the order will be discussed at the next public meeting.

AGENDA ITEM 5: APPOINTING NEW MEMBERS TO ADVSORY COMMISSION ON RULES OF CIVIL AND APPELLATE PROCEDURE

Justice Warner delivered his recommendation to appoint a total number of twelve members to the Advisory Commission on the Rules of Civil and Appellate Procedure. The recommendation would replace the outgoing five members with six new members. No decision on Justice Warner's recommendation was made. A vote on the agenda item will be carried over to the next public meeting.

Chief Justice Gray adjourned the meeting at 2:57 p.m.

Duly Submitted,

Douglas F. Schultz
Law Clerk